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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,021	08/22/2003	Robert H. Ray	RAY-001	9250

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 03/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/646,021

Applicant(s)

RAY ET AL.

Examiner

Chapman E Jeanette

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-10-11 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auberlin (1164909) in view of Brown(1307655). Auberlin shows a pole anchoring footing system comprising:

- a resilient body positionable within the ground surface 3; the body including a neck portion above element 6 in figures 1 and 2 and a base 1;
- the neck portion is connectable to the post 9;
- the neck portion has a consistent cross section and the base portion transitions into the neck portion;
- an elongated member adjacent the upper end of the post; see annotations on patent copy;
- a cap 19 attached to the elongated member adjacent to the upper end of the body;

Art Unit: 3635

Auberlin lacks the base with the upwardly tapered structure as shown by the footing system of Brown; Brown shows a base with a lower broad end and an upper end opposite the lower broad end. It would have been obvious, however, to include this tapered base to give the system a firm and anchored base as shown by the secondary reference.

The shape/material of the base portion with polygonal sides has been considered a matter of choice; one of ordinary skill in the art would have appreciated all possible shapes/materials for the footing system to assume and would have selected any commensurate with the intended purpose and function of the invention.

Auberlin discloses only one engaging member whereas Brown shows a plurality; one of ordinary skill in the art would have appreciated adding as many as needed in order to perform the desired strength and function characteristics required.

Claims 2 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as cited above as applied to claims 1- and 11 above, and further in view of Boyd et al.(5535535). Boyd et al shows the coupler in which Auberlin lacks. This coupler is viewed as an alternative means to secure footing parts together. It would have been obvious to employ the coupler of Boyd in order to provide the footing system with an additional function of a break away post.

Applicant's arguments have been considered but are not deemed persuasive. Applicant is merely claiming a telescopically inclined pole anchor with a tapered base portion. With the subject matter in mind it is unclear how applicant can argue there is no prima facie case of obviousness. Everything claimed is well known in the art; so common are these items there need be no show of proof. Some elements may appear to be difficult to show because common occurring items do not items of special publication.

Further the reasons for combining references were given in the rejection. Thus motivation was given: to give the system a firm and anchored base and to provide the footing system with an additional function with a breakaway base.

Given the simplicity of the invention the motivations for combining may seem to general but nevertheless provide motivation. The prior art base reference clearly teaches a telescopic member with two parts and the secondary reference clearly shows the tapered base. Each reference describes structure that is associated with function. Auberlin discloses structure that can be alternatively countersunk in the street. And Brown disclose structure which will withstand weather conditions and accidental mishaps. The motivation is different but nevertheless provides additional reasons for combining the two references. Both references teach additional objects and advantages for including their disclosed structure. Further since Auberlin teaches a break away post, the breakaway post coupling of Boyd would be obvious to combine with the base reference; one could see the combination as an advancement in the art of breakaway post which is more easily and readily repaired.

From the prior art the motivation to combine is overwhelmingly evident.  
See objects and advantage section of each reference.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E Jeanette whose telephone number is 703-308-1310. The examiner can normally be reached on Mon.-Fri, 8:30-6:00, every other fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JEANETTE E. CHAPMAN  
PRIMARY EXAMINER  
GROUP 2100, 3600